

Case 2:10-cr-00017-JPJ Document 131 Filed 06/18/12 Page 1 of 2 Pageid#: 1156

appeal. Moreover, dismissal of the § 2255 motion without prejudice will not prevent Elkins from pursuing relief under § 2255 after appeal proceedings are completed. *Villanueva v. United States*, 346 F.3d 55, 60 (2d Cir. 2003) (finding that prior § 2255 motion dismissed as premature did not trigger successive petition bar).

For these reasons, I will dismiss the § 2255 motion without prejudice as premature. A separate Final Order will be entered herewith.

DATED: June 18, 2012

/s/ James P. Jones  
United States District Judge